

## **§ 625.12**

withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled “Confidential Financial Information,” accompanied by a motion under § 622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to § 622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA’s procedures regarding release of information (12 CFR part 602).

## **§ 625.12 Documentation of fees and expenses.**

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under § 625.25 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

## **12 CFR Ch. VI (1–1–04 Edition)**

## **§ 625.13 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA’s final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

## **Subpart C—Procedures for Considering Applications**

## **§ 625.20 Settlement.**

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.26 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

## **§ 625.21 Filing and service of documents.**

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication

## **Farm Credit Administration**

## **§ 625.26**

(see §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

### **§ 625.22 Answer to application.**

(a) Within 30 days after service, counsel for the FCA may file an answer to the application. Unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed, the presiding officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the EAJA.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 625.25 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

### **§ 625.23 Reply.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.25 of this part.

### **§ 625.24 Comments by other parties.**

Any party to a proceeding other than the applicant and FCA counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines

that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

### **§ 625.25 Further proceedings.**

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

### **§ 625.26 Recommended decision.**

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary